

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

**JUDY A. BATES, Individually)
and as Personal Representative)
of the Heirs and Estate of LOREN)
G. BATES, Deceased, KEVIN BATES,)
and KARLA THOMPSON,)**

Plaintiffs,)

Case No. 06-0944-CV-W-GAF

v.)

SHINTEC, INC. et al,)

Defendants.)

**ANSWER OF DEFENDANT ROFFLER INTERNATIONAL, L.L.C.
TO SECOND AMENDED COMPLAINT**

Roffler International, L.L.C. (hereafter "Roffler"), for its Answer to Plaintiffs' Second Amended Complaint, denies each and every allegation in the Second Amended Complaint unless specifically admitted herein, and further answers each paragraph as follows:

JURISDICTION, VENUE, AND GENERAL ALLEGATIONS

1. Roffler is without sufficient information to admit or deny paragraph 1 and, therefore denies it.

2. Roffler is without sufficient information to admit or deny paragraph 2 and, therefore denies it.

3. Roffler is without sufficient information to admit or deny paragraph 3 and, therefore denies it.

4. Roffler denies that it is jointly and severally liable with other defendants named in paragraph 4, and Roffler denies it caused or contributed to the cause of any of

the alleged injuries. In further answer to paragraph 4, Roffler admits that it may be served as described in paragraph 4 (32), but denies the remaining allegation in paragraph 4 (32). Roffler is without sufficient information to admit or deny the remaining allegations in paragraph 4, and therefore denies those remaining allegations.

5. Roffler denies the allegations in paragraph 5.

COUNT I
STRICT LIABILITY

6. Roffler incorporates by reference each answer to paragraphs 1 through 5 for its answer to paragraph 6.

7. Roffler denies Paragraph 7, 7(a), 7(b) and 7(c), and any other subpart.
8. Roffler denies paragraph 8.
9. Roffler denies paragraph 9.
10. Roffler denies paragraph 10.

COUNT II
NEGLIGENCE

11. Roffler incorporates by reference each answer to paragraphs 1 through 5 for its answer to paragraph 11.

12. Roffler denies paragraph 12.
13. Roffler denies paragraph 13.
14. Roffler denies paragraph 14.
15. Roffler denies paragraph 15.
16. Roffler denies paragraph 16, 16(a), 16(b), 16(c), 16(d), 16(e), 16(f), 16(g), and any other subpart.

17. Roffler denies paragraph 17.

COUNT III
WILLFUL AND WANTON MISCONDUCT

18. Roffler incorporates by reference each answer to paragraphs 1 through 5 for its answer to paragraph 18.

19. Roffler denies paragraph 19, 19(a), 19(b), 19(c), 19(d), 19(e), 19(f), and 19(g), and any other subpart.

20. Roffler denies paragraph 20.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Second Amended Complaint fails to state sufficient facts to constitute a cause of action and fails to state a claim upon which relief can be granted.

2. Plaintiffs' claims against Roffler have been released and discharged. In 2002, Roffler obtained assets from a bankruptcy court trustee in a case styled: In re Styling Technology Corporation, et al., filed in US Bankruptcy Court for the District of Arizona, case no. 00-9473 through 00-09483-ECF-CGC. This bankruptcy action discharged any action Plaintiffs may have had at the time against the assets purchased. Further, no liabilities were assumed relating to the purchased assets. Therefore, Plaintiffs' have no claims against Roffler relating to the assets purchased, and Plaintiffs' claims to the extent they relate to the assets purchased out of the bankruptcy have been released and discharged.

3. Roffler incorporates each and every affirmative defense asserted by other defendants in the case into its affirmative defenses.

4. The alleged injuries and damages may have been caused in whole or in part by the acts or omissions of Plaintiff's decedent or the acts, omissions or fault of others that must be compared, thereby barring or diminishing any recovery against Roffler, pursuant to R.S. Mo. §537.765.

5. Plaintiffs' claims may be barred by R.S. Mo. §537.764, in that the alleged dangerous nature of the products, if any, allegedly sold or manufactured by Roffler were not known and could not be reasonably discovered at the time the products were placed in the stream of commerce.

6. Roffler may be entitled to dismissal pursuant to R.S. Mo. §537.762.

7. Plaintiffs' claims may be barred under the doctrine of assumption of risk.

8. Plaintiffs' claims may be barred by the applicable statutes of limitations or statute of repose, including but not limited to, R.S. Mo. §§516.120 and 537.100.

9. Plaintiffs' claims may be barred under the equitable doctrines of laches, waiver or estoppel.

10. Plaintiffs have failed to join necessary and indispensable parties.

11. Plaintiffs claims for punitive damages should be bifurcated pursuant to R.S. Mo §510.263.

12. To the extent Plaintiffs seek an award of punitive damages, Plaintiffs' claims for punitive damages or damages for aggravating circumstances are limited by the provisions of R.S. Mo. §510.265.

13. Roffler's liability to plaintiffs, if any, is limited by R.S. Mo. §537.067.1.

14. Roffler is entitled to a credit or offset for any settlement with other entity's pursuant to R.S. Mo. §537.060.

15. Plaintiffs are not entitled to any punitive damage award against Roffler or any other defendant and that such awards are limited for any one or more of the following reasons:

- a. The standards by which defendants' conduct is to be determined as alleged by Plaintiffs are vague and wholly arbitrary and as such deny due process in violation of the Fifth and Fourteenth Amendments of the United States Constitution;
- b. The standards for determining the amount or subsequent imposition of punitive damages are vague, supply no notice to defendants of the potential repercussions of their alleged conduct and are subject to the unbridled discretion of the fact finder, thereby denying due process under the Fifth and Fourteenth Amendments of the United States Constitution;
- c. Plaintiffs' request for punitive damages is criminal in nature and the rights given defendants in criminal proceedings under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution are applicable;
- d. Plaintiffs' request for punitive damages constitutes a request for or imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution;
- e. Plaintiffs' request for punitive damages constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution;
- f. Plaintiffs' request for punitive damages constitutes a denial of equal protection of the law in violation of the Fifth and Fourteenth Amendments of the United States Constitution in that defendants' wealth or net worth may be considered by a fact finder in determining the award of damages in a punitive damages award;
- g. Plaintiffs' request for punitive damages cannot protect defendants against multiple punishments for the same alleged wrong, thereby denying due process under the Fifth and Fourteenth Amendments of the United States Constitution;
- h. An award of punitive damages would violate defendants' due process under the United States Constitution as well as be in violation of the United States Supreme Court's decision in Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1 (1991);

- i. An award of punitive damages would violate provisions of the Constitution of the United States including Article I, Section 8, Section 9, Section 10: Article III, Section 2;
- j. An award of punitive damages would violate provisions of the 1945 Constitution of Missouri including, but not limited to Article I, Bill of Rights, Sections 2, 10, 13, 19, 21 and 22;
- k. The provisions of R.S. Mo. §510.263 and all Missouri Approved Jury Instructions relating to an award of punitive damages are unconstitutional in that they fail to provide for procedures or instructions that remedy the deficiencies set forth in the above subparagraphs.

16. The allegations of Plaintiffs' Second Amended Complaint relating to Roffler lack evidentiary support and violate the provisions of Federal Rule of Civil Procedure 11, entitling Roffler to its fees, expenses and costs herein.

17. This matter should be dismissed, or alternatively stayed, because the same action involving the same parties is pending in Texas state court.

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WHEREFORE, having fully answered the Second Amended Complaint, Roffler International, L.L.C. prays that this case be dismissed, that judgment be entered in its favor for it's fees, costs and expenses incurred herein.

On behalf of Roffler International, LLC,

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CERTIFICATE OF SERVICE

A copy of the foregoing was served via the CM/ECF system on the ____ day of August, 2007, to:

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